IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MASON	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 01-1799
ABINGTON TOWNSHIP	:	
POLICE DEPT., et al.	:	

MEMORANDUM

Baylson, J. **September 12, 2002**

Plaintiff Charles Mason ("Mason") filed an Amended Complaint in this Court against the Abington Township Police Department and police officer Vincent DiAntonio ("Defendants") pursuant to 42 U.S.C. §§ 1983 and 1988 and the First, Fourth, Fifth, Eighth and Fourteenth Amendments to the Constitution as well as pendent state related actions for false arrest and malicious abuse of process. Specifically, Mason alleges that the conduct of Defendants deprived him of the following rights, privileges and immunities secured to him by the Constitution: (1) right to be secure in his person and effects against unreasonable search and seizure under the Fourth and Fourteenth Amendments; (2) right to be informed of the nature and cause of the accusation against him under the Sixth and Fourteenth Amendments; and (3) right not to be deprived of life, liberty or property without due process of law under the Fourteenth Amendment.

Before the Court at this time is Defendants' Motion to Dismiss Mason's Amended Complaint for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6). Although Defendants' Motion seeks to dismiss all of the claims in the Amended Complaint, the Defendants' Memorandum of Law only discusses the following claims: (1) § 1983 claims against Abington Township Police Department ("Abington"); (2) all

claims against Officer Vincent DiAntonio ("DiAntonio") under qualified immunity or, in the alternative, the § 1983 claims against DiAntonio under the Fourth, Fifth, Sixth and Eighth Amendments; and (3) punitive damages claim against Defendants.

Defendants' Motion is, thus, unsupported as required under Local Rule 7.1 and must be denied as to the following claims: (1) § 1988 claims against Defendants; (2) § 1983 claims against DiAntonio under the First and Fourteenth Amendments (in the event qualified immunity does not apply); and (3) state law claims against Defendants for false arrest and malicious abuse of process. For the reasons stated below, the Motion will be granted in part and denied in part.

I. Legal Standard

When deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the court may look only to the facts alleged in the complaint and its attachments. Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1251, 1261 (3d Cir. 1994). The Court must accept as true all well pleaded allegations in the complaint and view them in the light most favorable to the plaintiff. Angelastro v. Prudential-Bache Sec., Inc., 764 F.2d 939, 944 (3d Cir. 1985). A Rule 12(b)(6) motion will be granted only when it is certain that no relief could be granted under any set of facts that could be proved by the plaintiff. Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988).

II. Factual and Procedural Background

In his Amended Complaint, Mason alleges that on the night of February 5, 2000, he was a passenger in a car owned and driven by his friend, Todd Buckley ("Buckley"). (Am. Compl. ¶ 7.) The car was involved in an automobile accident in Abington Township when Buckley drove it into several parked cars. Id. ¶ 8. DiAntonio arrived on the scene and was allegedly informed

by Mason, Buckley, and a bystander that Buckley was the driver. Id. ¶¶ 9-10. Nevertheless, Mason claims that DiAntonio administered field sobriety tests to both of the car's occupants and, when Buckley passed but Mason failed, DiAntonio arrested him. Id. ¶ 11. Mason alleges that DiAntonio then filed false charges of (1) filing a false oral police report; and (2) driving under the influence. Id. ¶ 13. A Pennsylvania judge determined that "the arrest and processing of [Mason] was without probable cause" and the charges against Mason were dismissed. Id. ¶ 15.

Mason filed his original Complaint in Pennsylvania state court. On April 12, 2001, Defendants removed Mason's case to this Court, arguing that Mason's Complaint stated a federal claim for a violation of 42 U.S.C. § 1983. Defendants then moved to dismiss the complaint on a number of grounds, several of which applied specifically to § 1983 actions. In response, this Court granted Mason leave to amend his Complaint, and dismissed Defendants' Motion to Dismiss as moot on October 24, 2001. Mason then filed an Amended Complaint on November 23, 2001, and Defendants filed the Motion to Dismiss the Amended Complaint, which is currently before the Court.

III. Discussion

A. Section 1983 Claims against Abington

Defendants move to dismiss Mason's § 1983 claims against Abington on the ground that it fails to state an adequate claim under Monell v. Dep't of Social Servs., 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978), because Abington does not possess any policy or practice that authorizes or condones the violation of constitutional rights by its officers and Mason has failed to allege or point to any specific policies or customs supporting a § 1983 claim against Abington. (Mem. Supp. Mot. Dismiss at 3-4.)

In order to prevail against the municipality under § 1983, Monell requires a plaintiff to demonstrate that there was a "direct causal link" between a violation of his rights and a policy or a custom of the municipality. See City of Canton v. Harris, 489 U.S. 378, 385, 109 S. Ct. 1197, 103 L. Ed. 2d 412 (1989); Beck v. City of Pittsburgh, 89 F.3d 966, 971 (3d Cir. 1996). As explained by the Third Circuit,

> "Policy is made when a 'decisionmaker possessing final authority to establish municipal policy with respect to the action' issues an official proclamation, policy, or edict." Kneipp v. Tedder, 95 F.3d 1199, 1212 (3d Cir. 1996) (quoting Pembaur v. City of Cincinnati, 475 U.S. 469, 481, 89 L. Ed. 2d 452, 106 S. Ct. 1292 (1986) (plurality opinion)) (alteration in original, other internal quotation marks omitted). Customs are "'practices of state officials . . . so permanent and well settled' as to virtually constitute law." Id. (quoting Monell, 436 U.S. at 691) (other internal quotation marks omitted).

Berg v. County of Allegheny, 219 F.3d 261, 275 (3d Cir. 2000). After identifying the policy or custom that caused the injury, the plaintiff must "demonstrate that, through its deliberate conduct, the municipality was the 'moving force' behind the injury alleged." Id. at 276 (quoting Board of County Comm'rs v. Brown, 520 U.S. 397, 404, 117 S. Ct. 1382, 137 L. Ed. 2d 626 (1997). If the policy or custom identified does not facially violate federal law, causation must be established by "demonstrating that the municipal action was taken with 'deliberate indifference' as to its known or obvious consequences. A showing of simple or even heightened negligence will not suffice." Berg, 219 F.3d at 276 (quoting Brown, 520 U.S. at 407).

Mason's Amended Complaint lacks any allegation that the policy or custom facially violates the law or that Abington was "deliberately indifferent" to an obvious risk. Mason does allege that Abington knew that DiAntonio had a habit of making false arrests and that DiAntonio and other officers were irresponsible in their dealings with the community. He also claims that

Abington could have solved these problems by (1) not hiring DiAntonio and the other officers; (2) properly training them; or (3) disciplining them. Nothing in the Amended Complaint, however, alleges conduct on the part of Abington constituting deliberate indifference or exceeding "heightened negligence." See Canton, 489 U.S. at 390 n.10 (arming police officers without training them in the constitutional limits to firearm use would be "deliberate indifference"); Brown v. Muhlenberg Township, 269 F.3d 205, 215-16 (3d Cir. 2001) (discussing Monell liability in failure-to-train cases and noting that "[t]he scope of failure to train liability is a narrow one"); Berg, 219 F.3d at 276 (hiring errors normally only considered "deliberate indifference" where there is a pattern of violations). Thus, Mason has failed to state a claim upon which relief can be granted for his § 1983 against Abington. Accordingly, Defendant's Motion to Dismiss Mason's § 1983 claims against Abington will be granted.

B. Section 1983 Claims against DiAntonio

Section 1983 does not create substantive rights but provides a remedy for the violation of rights created by federal law. Groman v. Township of Manalapan, 47 F.3d 628, 633 (3d Cir. 1995) (citing Oklahoma City v. Tuttle, 471 U.S. 808, 816, 105 S. Ct. 2427, 85 L. Ed. 2d 791 (1985)). A prima facie case under § 1983 requires a plaintiff to demonstrate: (1) a person deprived him of a federal right; and (2) the person who deprived him of that right acted under color of state law. Groman, 47 F.3d at 633 (citing Gomez v. Toledo, 446 U.S. 635, 640, 100 S. Ct. 1920, 64 L. Ed. 2d 572 (1980)).

Defendants move to dismiss Mason's claims against DiAntonio on the grounds that Mason has failed to allege any unlawful conduct on the part of DiAntonio. (Mem. Supp. Mot. Dismiss at 6.)

The Court, therefore, must determine whether Mason has properly alleged a violation of his constitutional rights in order to survive Defendants' Motion to Dismiss.

1. Fourth Amendment

The Court must take as true Mason's allegation that DiAntonio was acting under color of state law and pursuant to his authority as police personnel and as an officer for Abington. (Am. Compl. ¶ 6.) Defendants argue that Mason has no viable Fourth Amendment claim because Mason's arrest by DiAntonio was reasonable in light of the surrounding circumstances. (Mem. Supp. Mot. Dismiss at 7.) The Fourth Amendment, made applicable to the States by the Fourteenth Amendment, protects "the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures." U.S. CONST. amend. IV. In order to establish a claim under the Fourth Amendment, a plaintiff must show that the actions of the defendants (1) constituted a "search" or "seizure" within the meaning of the Fourth Amendment; and (2) were "unreasonable" in light of the surrounding circumstances. Parker v. Wilson, No. CIV.A.98-3531, 2000 U.S. Dist. LEXIS, at *8 (E.D. Pa. May 30, 2000) (citing Brower v. County of Inyo, 489 U.S. 593, 595-600, 109 S. Ct. 1378, 103 L. Ed. 2d 628 (1989)). Mason appears to allege that his arrest violated the Fourth Amendment's prohibition against unreasonable search and seizure because DiAntonio lacked probable cause to arrest him and, thus, unlawfully seized him.

"The proper inquiry in a section 1983 claim based on false arrest or misuse of the criminal process is not whether the person arrested in fact committed the offense but whether the arresting officers had probable cause to believe the person arrested had committed the offense." Dowling v. City of Philadelphia, 855 F.3d 136, 141 (3d Cir. 1988) (citations omitted). Probable

cause exists when "'at the moment the arrest was made . . . the facts and circumstances within [the defendant's] knowledge and of which [he] had reasonably trustworthy information were sufficient to warrant a prudent man in believing' that the plaintiff had violated the law." Merkle v. Upper Dublin High School, 211 F.3d 782, 789 (3d Cir. 2000) (quoting Hunter v. Bryant, 502 U.S. 224, 228, 112 S. Ct. 534, 116 L. Ed. 2d 589 (1991)). Although the determination of whether probable cause exists for a § 1983 claim is typically a question for the jury, a court may conclude "that probable cause exists as a matter of law if the evidence viewed most favorably to Plaintiff would not support a contrary factual finding." Merkle, 211 F.3d at 788-89. In making this determination, a court must consider the totality of the circumstances and weigh the inculpatory evidence against the exculpatory evidence. Id. at 789.

The facts alleged, taken in the light most favorable to Mason, sufficiently support Mason's claim that DiAntonio violated his Fourth Amendment rights by charging him without any evidence. Although there was arguably sufficient reason for DiAntonio to take Mason to the police station, there was, from the pleadings, absolutely no evidence that he was driving the car, and, thus, DiAntonio's criminal complaint against Mason was completely unfounded. Mason's allegation that DiAntonio was informed by Mason, Buckley, and a bystander that Buckley was the driver supports the Court's holding, at this stage of the case, from the pleadings, that there was no evidence at all that Mason was driving the car. Mason, therefore, has set forth a viable § 1983 claim under the Fourth Amendment. Accordingly, Defendants' Motion to Dismiss Mason's § 1983 claim under the Fourth Amendment will be denied.

2. Fifth Amendment

Defendants argue that Mason's claim under the Fifth Amendment should be dismissed

because Mason has in no way detailed in his Amended Complaint the elements necessary for a viable Fifth Amendment cause of action or indicated the factual circumstances of his arrest that give rise to such a cause of action. (Mem. Supp. Mot. Dismiss at 8.)

The Fifth Amendment prohibits, in part, deprivations of property accomplished without due process of law. U.S. CONST. amend. V. The due process clause of the Fifth Amendment, however, does not directly apply to the actions of state officials. Moleski v. Cheltenham Township, No. CIV.A.01-4648, 2002 U.S. Dist. LEXIS 12311, at *17-18 (E.D. Pa. Apr. 30, 2002) (citations omitted). "The limitations of Fifth Amendment restrict only federal government action." Id. at *18 (quoting Nguyen v. United States Catholic Conference, 719 F.2d 52, 51 (3d Cir. 1983)).

Mason's Amended Complaint does not specify under which clause of the Fifth Amendment he is seeking relief but the Court assumes it is the due process clause. Because DiAntonio is a state actor and the Fifth Amendment only restricts federal government action, Mason does not have a viable § 1983 claim under the Fifth Amendment against DiAntonio. Accordingly, Defendants' Motion to Dismiss Mason's § 1983 claim under the Fifth Amendment will be granted.

3. Sixth Amendment

Defendants argue that Mason has no viable cause of action pursuant to the Sixth Amendment because Mason has failed to allege that he was not advised of the proceedings that were being instituted against him. (Mem. Supp. Mot. Dismiss at 7-8.)

The Sixth Amendment guarantees the right to a speedy trial, the right to be informed of the nature and cause of the accusation, the right to be confronted with the witnesses against him,

the right to have a compulsory process for obtaining witnesses in his favor, and the right to assistance of counsel for his defense. U.S. CONST. amend. VI. It is well established that a person's Sixth Amendment rights, made applicable to the states through the Fourteenth Amendment, do not attach until adversary judicial proceedings have been brought against him. Moleski, 2002 U.S. Dist. LEXIS 12311, at *19 (citing Kirby v. Illinois, 406 U.S. 682, 688, 92 S. Ct. 1877, 32 L. Ed. 2d 411 (1972)). As a result, the Sixth Amendment does not require that a defendant be immediately informed of charges at the time of arrest. See Kladis v. Brezek, 823 F.2d 1014, 1018 (7th Cir. 1987) ("Although the police would do well to inform arrested persons of the charges against them," neither the Fourth nor Sixth Amendment guarantee the right to be informed of the reason for arrest.)

Because Mason concedes in his Amended Complaint that he went before a magistrate and was charged with filing a false oral police report and driving under the influence prior to his court appearance (Am. Compl. ¶ 13), Mason was informed of the nature and cause of the accusations against him. Mason, therefore, does not have a viable § 1983 claim under the Sixth Amendment. Accordingly, Defendants' Motion to Dismiss Mason's § 1983 claim under the Sixth Amendment will be granted.

4. Eighth Amendment

Defendants argue that Mason's claim under the Eighth Amendment should be dismissed because Mason has in no way detailed in his Amended Complaint the elements necessary for a viable Eighth Amendment cause of action or indicated the factual circumstances of his arrest that give rise to such cause of action. (Mem. Supp. Mot. Dismiss at 8.)

The Eight Amendment prohibits "cruel and unusual" punishment. U.S. CONST. amend.

VIII. "The most accepted view of the application of the Eighth Amendment's proscription is that it only applies after conviction." Moleski, 2002 U.S. Dist. LEXIS 12311, at *20 (citing Fuentes v. Wagner, 206 F.3d 335, 344 n.11 (3d Cir. 2000)). In other words, the Eighth Amendment's protection applies only to convicted individuals, not pretrial detainees. Id.

Because a Pennsylvania judge dismissed the charges against Mason, Mason was never convicted. The Eighth Amendment, therefore, does not protect Mason in the present situation. Accordingly, Defendants' Motion to Dismiss Mason's § 1983 claim under the Eighth Amendment will be granted.

D. Qualified Immunity

Defendants claim that DiAntonio is entitled to qualified immunity. (Mem. Supp. Mot. Dismiss at 4.) Under qualified immunity, "government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have know." Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982).

In Saucier v. Katz, 533 U.S. 194, 121 S. Ct. 2151, 150 L. Ed. 2d 272 (2001), the Supreme Court held that the threshold analysis in a qualified immunity analysis is whether the facts alleged, viewed in the light most favorable to the party alleging the injury, show that the officer's conduct violated a constitutional right. Curly v. Klem, 298 F.3d 271, 277 (3d Cir. 2002) (citing Saucier, 533 U.S. at 201). If the plaintiff fails to allege a violation of a constitutional right, no further inquiry is necessary. Id. If the alleged facts show that there was a constitutional violation, then the next step is to determine whether the right was clearly established. Id. In other words, the court must consider "whether it would be clear to a reasonable officer that his

conduct was unlawful in the situation he confronted." Id. This reasonableness inquiry is objective and "must be undertaken in light of the specific context of the case, not as a broad general proposition." Id. at 277, 279. If a court concludes that an officer's conduct did violate a clearly established constitutional right, then it must deny him the protection afforded by qualified immunity. Id. at 277.

The right to be free from arrest without any probable cause whatsoever is clearly established as a well known constitutional right. The Court, therefore, finds that it would be clear to a objectively reasonable officer that his conduct in charging Mason for filing a false oral police report and driving under the influence would be unlawful because there is no evidence in the record at this time that warranted the charges against Mason. DiAntonio, therefore, is not entitled to qualified immunity at this stage of the case.

E. Punitive Damages Claim

Punitive damages are not recoverable against a municipality under § 1983. Marchese v. Umstead, 110 F. Supp. 2d 361, 373 (E.D. Pa. 2000) (citing Newport v. Fact Concerts, Inc., 453 U.S. 247, 101 S. Ct. 2748, 69 L. Ed. 2d 616 (1981)). In addition, because suits against individuals in their official capacities are, in effect, suits against the governmental agency, punitive damages are not available against officers in their official capacities under § 1983. Id. (citing Gregory v. Chehi, 843 F.2d 111, 120 (3d Cir. 1988)).

Although Mason cannot obtain punitive damages against Abington and DiAntonio in his official capacity under § 1983, Mason may bring a claim for punitive damages against Abington and DiAntonio in his official capacity for the state law claims and against DiAntonio in his individual capacity for all claims. Accordingly, Defendants' Motion to Dismiss Mason's

punitive damages claim will be denied.

IV. Conclusion

For the foregoing reasons, Defendant's Motion to Dismiss is denied in part and granted in part. The Court will dismiss only the § 1983 claims against Abington and the § 1983 claims against DiAntonio under the Fifth, Sixth and Eighth Amendments. Therefore, the following claims remain: (1) § 1988 claims against Defendants; (2) § 1983 claims against DiAntonio under the First, Fourth and Fourteenth Amendments; (3) state law claims against Defendants for false arrest and malicious abuse of process; and (4) punitive damages claim against Defendants.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MASON	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 01-1799
ABINGTON TOWNSHIP	:	
POLICE DEPT., et al.	:	

ORDER

AND NOW, this 12th day of September, 2002, it is hereby ORDERED that:

1. Defendants' motion to dismiss Mason's Amended Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure is GRANTED IN PART and DENIED IN PART as follows:

a. Defendant's Motion to Dismiss the § 1983 claims against Abington is GRANTED;

b. Defendant's Motion to Dismiss the § 1983 claims against DiAntonio under the Fifth, Sixth and Eighth Amendments is GRANTED;

c. Defendant's Motion to Dismiss the § 1983 claim against DiAntonio under the Fourth Amendment is DENIED; and

d. Defendant's Motion to Dismiss the punitive damages claim against Defendants is DENIED.

Defendants' Motion to Dismiss the § 1988 claims against Defendants, the § 1983 claims against DiAntonio under the First and Fourteenth Amendments, and the state law claims against Defendants for false arrest and malicious abuse of process is DENIED because it is unsupported by Defendants' Memorandum of Law as required under Local Rule 7.1.

Defendants shall answer the remaining counts of the Complaint within ten (10) days.

BY THE COURT:

MICHAEL M. BAYLSON, U.S.D.J.

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